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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/412,792	10/05/1999	JAY H. CONNELLY	10559/055001	1113
8791	7590	06/08/2006		EXAMINER
BLAKELY SOKOLOFF TAYLOR & ZAFMAN 12400 WILSHIRE BOULEVARD SEVENTH FLOOR LOS ANGELES, CA 90025-1030				SHELEHEDA, JAMES R
			ART UNIT	PAPER NUMBER
				2623

DATE MAILED: 06/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/412,792	CONNELLY, JAY H.
	Examiner	Art Unit
	James Sheleheda	2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 April 2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3-14 and 18-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3-14 and 18-30 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### *Response to Amendment*

1. The declaration filed on 04/25/06 under 37 CFR 1.131 has been considered but is ineffective to overcome the Grooters (6,684,399) reference.
  - a. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Grooters reference to either a constructive reduction to practice or an actual reduction to practice. An applicant must account for the entire period during which diligence is required. *Gould v. Schawlow*, 363 F.2d 908, 919, 150 USPQ 634, 643 (CCPA 1966) (Merely stating that there were no weeks or months that the invention was not worked on is not enough.); *In re Harry*, 333 F.2d 920, 923, 142 USPQ 164, 166 (CCPA 1964) (statement that the subject matter "was diligently reduced to practice" is not a showing but a mere pleading). A 2-day period lacking activity has been held to be fatal. *In re Mulder*, 716 F.2d 1542, 1545, 219 USPQ 189, 193 (Fed. Cir. 1983) (37 CFR 1.131 issue). As noted in the declaration, it is the inventor's statement that the invention was conceived prior to June 17, 1999 and constructively reduced to practice on October 5, 1999. There is no showing with respect to the continued diligence on the part of the inventor during the entire period to reduce the invention to practice between June 17, 1999-June 21, 1999, June 21, 1999-September 15, 1999, September 15, 1999-September 27, 1999 and between September 28, 1999 and October 5, 1999. The statement that provided by Jay

Connelly is lacking of any showing as to positive actions throughout the entire period by the inventor, as a plurality of dates are completely unaccounted for.

Furthermore, no statements have been provided regarding the diligence of the attorney in preparing and filing patent application inures, as set forth in MPEP 2138.06, six days to execute and file application is acceptable. Haskell v. Coleburne, 671 F.2d 1362, 213 USPQ 192, 195 (CCPA 1982). See also Bey v. Kollonitsch, 866 F.2d 1024, 231 USPQ 967 (Fed. Cir. 1986). If the attorney has a reasonable backlog of unrelated cases which he takes up in chronological order and carries out expeditiously, that is sufficient to provide reasonable diligence. Work on a related case(s) that contributed substantially to the ultimate preparation of an application can be credited as diligence. In this case, however, it is unclear if reasonable diligence has taken place as no specific explanation has been provided towards the period between time the attorney was hired to prepare the application and the filing date of October 5, 1999. The exact period is unclear, as the date upon which the law firm was engaged to prepare and file the application has not even been indicated.

b. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Grooters reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means

themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

The current independent claims, 1, 10, 14, 18, 22 and 26, call for the receiver to process received schedule data *prior* to the scheduled time for content to be broadcast to select one application from a plurality of viewer applications or to *update* the receiver with a new viewer application.

Exhibit A, provided by applicant, discloses the transmission of schedule data indicating the required application to access the content (pages 18 and 19, of applicant's response). There does not appear, however, to be any specific disclosure of processing the received schedule data *prior* to the scheduled time to select one application from a plurality of viewer applications. As indicated on page 19, for example, upon a user *tuning* to a particular channel, the receive will access the database to identify and select the required application. There is no disclosure of this selection happening prior to the broadcast time, as the selection takes place when the user tunes to the channel.

Furthermore, while exhibit A discloses wherein the receiver may download the required application to decode and display the content (see Page 19), there does not appear to be any specific disclosure of processing the received schedule data *prior* to the scheduled time to *update* the receiver with a new viewer application. There is no specific teaching of when exacting the downloading step took place within the disclosure, or that the downloading was in any way related to the scheduling information.

***Response to Arguments***

2. Applicant's arguments filed 04/25/06 have been fully considered but they are not persuasive.

Applicant's arguments in regards to the Grooters reference are not persuasive, as (1) above clearly indicates that applicant's supplied 1.131 declaration is insufficient to overcome the reference.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 3-7, 9-14, 18-20 and 22-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Grooters (6,684,399).

As to claim 1, Grooters discloses a method of broadcasting data (Fig. 2; column 4, lines 59-65), comprising:

sending to a receiver scheduling information (Figs. 3 and 4; column 6, lines 29-33) that includes a scheduled time (Fig. 4; column 6, lines 13-33) and identifies an encoding format (see Fig. 4; column 6, line 58-column 7, line 5), wherein the encoding

format comprises a content format used to encode the data prior to broadcasting and apart from encoding the broadcast for transmission through a transport medium (such as .mov, .mmp or .ram format; see Fig. 4; column 6, line 58-column 7, line 5);

wherein said scheduling information is capable of processing by receiver prior to the scheduled time (processing and displaying the guide indicating future content; Fig. 4; column 7, lines 20-67) to select one viewer application from a plurality of viewer applications (to allow the selection of the appropriate player for the media format; column 6, lines 58-column 7, line 1) which are stored on the receiver (to play the specific format media; column 6, line 58-column 7, line 1 and column 7, lines 38-50) and are capable of processing the broadcast data in the encoding format at the scheduled time (to play the specific format media; column 6, line 58-column 7, line 1 and column 7, lines 38-50); and

broadcasting the data at the scheduled time (column 7, lines 33-67).

As to claim 3, Grooters discloses wherein the sent information identifies a content provider for the data (such as NASA; see Fig. 4).

As to claim 4, Grooters discloses wherein the sent information identifies a channel for broadcasting the data (see Fig. 4); and  
the broadcast transmits the data in the identified channel (column 7, lines 38-67).

As to claim 5, Grooters discloses wherein the identified channel comprises a cable channel (Fig. 4).

As to claim 6, Grooters discloses wherein the viewer applications decode broadcasted data (to display multimedia formatted content; column 6, line 58-column 7, line 1 and column 7, lines 38-50).

As to claim 7, Grooters discloses wherein the broadcasting starts at a predetermined time after the sending of the information (Fig. 4).

As to claim 9, Grooters discloses wherein sending second information about a second scheduled time and content format for a broadcast of new data (see Fig. 4), the second content format being indicative of a new viewer application for processing the new data (utilizing a second multimedia format, such as .mmp or .vid; see Fig. 4); and then broadcasting the new data during the second scheduled time (Fig. 4).

As to claim 10, Grooters discloses a method of processing data (Fig. 2; column 4, lines 59-65), comprising:

receiving scheduling information (Figs. 3 and 4; column 6, lines 29-33) providing broadcast times for data broadcasts (Fig. 4; column 6, lines 13-33) and information to identify an encoding format (see Fig. 4; column 6, line 58-column 7, line 5), wherein the

encoding format comprises a content format used to encode the data prior to broadcasting and apart from encoding the broadcast for transmission through a transport medium (such as .mov, .mmp or .ram format; see Fig. 4; column 6, line 58-column 7, line 5);

processing the scheduling information prior to the broadcast times (processing and displaying the guide indicating future content; Fig. 4; column 7, lines 20-67) to select a viewer application from a plurality of viewer applications (to allow the selection of the appropriate player for the media format; column 6, lines 58-column 7, line 1) which are stored at a receiver (to play the specific format media; column 6, line 58-column 7, line 1 and column 7, lines 38-50) and are capable of processing the data broadcasts in the encoding format at the broadcast times (to play the specific format media; column 6, line 58-column 7, line 1 and column 7, lines 38-50); and broadcasting the data at the scheduled time (column 7, lines 33-67).

As to claim 11, Grooters discloses wherein the scheduling information identifies channels scheduled to broadcast the data (Fig. 4).

As to claim 12, Grooters discloses wherein the scheduling information associated with a portion of the broadcasts identifies one of content formats (Fig. 4) and content providers of the associated data (Fig. 4).

As to claim 13, Grooters discloses wherein the processing comprises decoding the received data (decoding and displaying the received program guide; Fig. 4; column 6, line 29-column 7, line 67).

As to claim 14, Grooters discloses a method of processing data (Fig. 2; column 4, lines 59-65), comprising:

receiving scheduling information (Figs. 3 and 4; column 6, lines 29-33) that provides broadcast times for data broadcasts (Fig. 4; column 6, lines 13-33) and information to identify an encoding format (see Fig. 4; column 6, line 58-column 7, line 5), wherein the encoding format comprises a content format used to encode the data prior to broadcasting and apart from encoding the broadcast for transmission through a transport medium (such as .mov, .mmp or .ram format; see Fig. 4; column 6, line 58-column 7, line 5);

writing the scheduling information to a scheduling table (downloading and storing the guide; column 6, lines 29-33) having entries indexed by scheduled times and channels (Fig. 4);

processing the scheduling information prior to the broadcast times (processing and displaying the guide indicating future content; Fig. 4; column 7, lines 20-67) to select a viewer application from a plurality of viewer applications (to allow the selection of the appropriate player for the media format; column 6, lines 58-column 7, line 1) which are stored at a receiver (to play the specific format media; column 6, line 58-column 7, line 1 and column 7, lines 38-50) and are capable of processing the data

broadcasts in the encoding format at the broadcast times (to play the specific format media; column 6, line 58-column 7, line 1 and column 7, lines 38-50); and broadcasting the data at the scheduled time (column 7, lines 33-67).

As to claim 18, Grooters discloses system for receiving data broadcasts (Fig. 2; column 4, lines 59-65), comprising:

an interface to receive scheduling information (Figs. 3 and 4; column 6, lines 29-33) that provides broadcast times for data broadcasts (Fig. 4; column 6, lines 13-33) and information to identify an encoding format (see Fig. 4; column 6, line 58-column 7, line 5), wherein the encoding format comprises a content format used to encode the data prior to broadcasting and apart from encoding the broadcast for transmission through a transport medium (such as .mov, .mmp or .ram format; see Fig. 4; column 6, line 58-column 7, line 5);

a data storage device (column 3, lines 21-50) storing a plurality of viewer applications to decode the broadcasts of data (to play the specific format media; column 6, line 58-column 7, line 1 and column 7, lines 38-50);

a processor coupled to the data storage device (Fig. 1), the processor to process the scheduling information prior to the broadcast times (processing and displaying the guide indicating future content; Fig. 4; column 7, lines 20-67) to select viewer applications from a plurality of viewer applications on said data storage device (to allow the selection of the appropriate player for the media format; column 6, lines 58-column 7, line 1) and capable of processing the data broadcasts in the encoding format for the

broadcasts (to play the specific format media; column 6, line 58-column 7, line 1 and column 7, lines 38-50); and

broadcasting the data at the scheduled time (column 7, lines 33-67).

As to claim 19, Grooters discloses wherein the data storage device further stores an executable control application for updating a scheduling table in response to receiving new scheduling information for a broadcast of data (updating the schedule for succeeding time periods; column 7, lines 47-67).

As to claim 20, Grooters discloses wherein the control application selects the viewer application to decode data based on information from the scheduling table (wherein the guide indicates the URL and media format; Fig. 4 and column 6, lines 58-67).

As to claim 22, Grooters discloses a data storage device encoding computer executable instructions for a method of broadcasting data (Fig. 2; column 4, lines 59-65), the instructions to cause a system to:

send scheduling information to a receiver (Figs. 3 and 4; column 6, lines 29-33) about a scheduled time (Fig. 4; column 6, lines 13-33) and information to identify an encoding format (see Fig. 4; column 6, line 58-column 7, line 5), wherein the encoding format comprises a content format used to encode the data prior to broadcasting and

apart from encoding the broadcast for transmission through a transport medium (such as .mov, .mmp or .ram format; see Fig. 4; column 6, line 58-column 7, line 5);

wherein said scheduling information is capable of processing by receiver prior to the scheduled time (processing and displaying the guide indicating future content; Fig. 4; column 7, lines 20-67) to select one viewer application from a plurality of viewer applications (to allow the selection of the appropriate player for the media format; column 6, lines 58-column 7, line 1) which are stored on the receiver (to play the specific format media; column 6, line 58-column 7, line 1 and column 7, lines 38-50) and are capable of processing the broadcast data in the encoding format at the scheduled time (to play the specific format media; column 6, line 58-column 7, line 1 and column 7, lines 38-50); and

broadcast the data at the scheduled time (column 7, lines 33-67).

As to claim 23, Grooters discloses wherein the sent information identifies one of a content provider for the data (such as NASA; see Fig. 4) and a scheduled broadcast channel for the data (Fig. 4).

As to claim 24, Grooters discloses wherein the instructions further cause the system to broadcast the data at a predetermined time after the sending of the information (broadcasting the content at the scheduled time; see Fig. 4; column 7, lines 20-67).

As to claim 25, Grooters discloses wherein  
broadcast second information about a second scheduled time and content format  
for a broadcast of new data (see Fig. 4), the second content format being indicative of a  
new viewer application for processing the new data (utilizing a second multimedia  
format, such as .mmp or .vid; see Fig. 4); and then,  
broadcasting the new data during the second scheduled time (Fig. 4).

As to claim 26, Grooters discloses a data storage device storing executable  
instructions (Fig. 2; column 4, lines 59-65), the instructions to cause a computer to:  
receive scheduling information (Figs. 3 and 4; column 6, lines 29-33) for  
encoding formats (see Fig. 4; column 6, line 58-column 7, line 5) and broadcast times of  
broadcasts of data (Fig. 4; column 6, lines 13-33), wherein the encoding format  
comprises a content format used to encode the data prior to broadcasting and apart  
from encoding the broadcast for transmission through a transport medium (such as  
.mov, .mmp or .ram format; see Fig. 4; column 6, line 58-column 7, line 5);  
process the scheduling information prior to the broadcast times (processing and  
displaying the guide indicating future content; Fig. 4; column 7, lines 20-67) to select a  
viewer application from a plurality of viewer applications (to allow the selection of the  
appropriate player for the media format; column 6, lines 58-column 7, line 1) which are  
stored on the receiver (to play the specific format media; column 6, line 58-column 7,  
line 1 and column 7, lines 38-50) and are capable of processing the broadcast data in

the encoding format at the scheduled time (to play the specific format media; column 6, line 58-column 7, line 1 and column 7, lines 38-50);

receive data from one of the broadcasts at the scheduled broadcast time (column 7, lines 33-67); and

process the received data with a viewer application for processing in the encoding format (column 6, line 58-column 7, line 1 and column 7, lines 38-50).

As to claim 27, Grooters discloses wherein the scheduling information identifies channels schedule to broadcast the data (see Fig. 4).

As to claim 28, Grooters discloses wherein the instructions to process further cause the computer to:

decode the received data (decoding and displaying the received program guide; Fig. 4; column 6, line 29-column 7, line 67).

As to claim 29, Grooters discloses the instructions further causing the computer to:

write the scheduling information to a scheduling table (downloading and storing the guide; column 6, lines 29-33) having entries indexed by scheduled times and channels (Fig. 4); and

wherein the instruction causing the computer to process causes the computer to select the viewer application based on data from the scheduling table (wherein the guide indicates the URL and media format; Fig. 4 and column 6, lines 58-67).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 21 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grooters.

As to claims 21 and 30, while Grooters discloses a system for selecting a viewer application, he fails to specifically disclose that the control application selects the viewer application based on availability data for the viewer application stored in a viewer application selection table.

Official Notice is hereby taken that it is well known in the art that a web browser stores information regarding what plug-ins are installed. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Grooters with the software installation information of the well-known prior art in order for the web browser to know what types of data it can handle and what types of data it cannot. This reads on the claimed availability data for the viewer applications stored in a viewer application selection table.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grooters, as applied to claim 1, and further in view of the Advanced Television Enhancement Forum Specification (ATVEF) (of record).

As to claim 8, while Grooters discloses broadcasting content in an encoding format, he fails to specifically disclose wherein the content format is an ATVEF format.

The Advanced Television Enhancement Forum Specification (ATVEF) outlines the implementation and use of the ATVEF format for distributing video content in conjunction with other multimedia-rich hypertext data. The ATVEF Specification is evidence that ordinary workers in the art would recognize the benefit of utilizing the ATVEF format to transport and display real-time video content in conjunction with other hypertext multimedia. Therefore, it would have been obvious to ordinary workers in the art to combine the user interactive video transmission and receiving system of Grooters with the ATVEF format of the ATVEF Specification in order to facilitate transporting and embedding video within a hypertext linked multimedia display and vice versa to insure compatibility with a wide range of devices using a well known standard (ATVEF).

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sheleheda whose telephone number is (571) 272-7357. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James Sheleheda  
Patent Examiner  
Art Unit 2623

JS



CHRIS KELLEY  
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